FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [redacted] 25

BENJAMIN F. BELCHER,

Petitioner,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

ROBERTS P. ELAM,
Counsel for Petitioner.

MARK D. EAGLETON,
JOSEPH B. MCGLYNN,
Of Counsel.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary and short statement of the matter involved	2
Opinions of the courts below	5
Jurisdiction of this Court	5
Questions presented	7
Summary of reasons for allowance of writ	7
Prayer for writ	9
Brief in support of petition	11

Table of Cases Cited.

Atlantic Coast Line R. Co. v. *Davis*, 279 U. S. 34, 49 Sup. Ct. 210, 73 L. Ed. 601	6
Belcher v. *Louisville & Nashville R. Co.*, 384 Ill. 281, 51 N. E. (2d) 282	5
Gulf M. & N. R. Co. v. *Wells*, 275 U. S. 455, 48 Sup. Ct. 151, 72 L. Ed. 370	6
Herb v. *Pitcairn*, 384 Ill. 237, 51 N. E. 2d 277	5, 11
Minneapolis, St. P. & S. S. M. R. Co. v. *Gotcan*, 269 U. S. 406, 46 Sup. Ct. 129, 70 L. Ed. 335	6
Mitchell v. *Louisville & N. R. Co.*, 379 Ill. 522, 42 N. E. 2d 86	3
Seaboard Air Line R. Co. v. *Horton*, 233 U. S. 492, 34 Sup. Ct. 635, 58 L. Ed. 1062	6
Werner v. *Illinois Central R. R. Co.*, 379 Ill. 559, 42 N. E. 2d 82	3

Statutes Cited.

Constitution of Illinois, Article VI, Sec. 1	4
Federal Employers' Liability Act (Act of April 22, 1908, c. 149, 35 Stat. 65, as amended by Act of April 5, 1910, c. 143, 36 Stat. 291; U. S. C. (1934 Ed.), Title 45, Sections 51-59)	2, 6

Page

Federal Safety Appliance Act (Act of March 21, 1893, c. 196, 29 Stat. 531, as amended by Act of March 2, 1903, c. 196, 29 Stat. 531, as amended by Act of March 2, 1903, c. 976, 32 Stat. 943 and Act of April 14, 1910, c. 160, 36 Stat. 298; U. S. C. (1934 Ed.), Title 45, Sections 1-16) 3, 6

Judicial Code, Sec. 237, as amended 5

Illinois Revised Statutes, 1941, Chap. 146, Sec. 36 3, 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 682

BENJAMIN F. BELCHER,

Petitioner,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes Benjamin F. Belcher, petitioner, and respectfully petitions this Honorable Court to grant a writ of certiorari to the Supreme Court of the State of Illinois, and to remove therefrom to this Court for review, the record in the case lately pending in said Supreme Court of the State of Illinois, styled *Benjamin F. Belcher, plaintiff-appellant, vs. Louisville & Nashville Railroad Company, a corporation, defendant-appellee*, being cause No. 27,276 on the docket of said Supreme Court of the State of Illinois.

The duly certified record, including all the proceedings in the City Court of East St. Louis, Illinois, wherein said cause was instituted, in the Circuit Court of St. Clair County, Illinois, to which the venue of said cause was changed and in which judgment was entered, and in the Supreme Court of the State of Illinois, to which an appeal was taken by said Benjamin F. Belcher from the judgment of the trial court, is filed herewith under separate cover.

Your petitioner represents that he is aggrieved by the judgment of the Supreme Court of the State of Illinois entered in said cause, wherein the said Supreme Court of Illinois affirmed the judgment of the trial court, and on the 12th day of November, 1943, thereafter, denied this petitioner's petition for a rehearing of said cause, and entered a final judgment affirming the judgment of the trial court.

Your petitioner states that the matters of issue in said cause are of a Federal nature and are of peculiar gravity and importance, in that said suit was brought under the Federal Employers' Liability Act to recover damages for personal injuries sustained by this petitioner on February 15, 1939, as a result of the violation of the Federal Safety Appliance Act by the respondent Louisville & Nashville Railroad Company, a corporation, and in that the decision of the Supreme Court of the State of Illinois, complained of, is in conflict with the applicable decisions of this Honorable Court upon the questions involved, and the principles announced by this Court in those decisions.

Summary and Short Statement of the Matter Involved.

On June 22, 1940, this petitioner, as plaintiff, filed in the City Court of East St. Louis, Illinois, his complaint against the respondent, as defendant (R. 2), stating a cause of action against said respondent under the Federal Employers' Liability Act (U. S. C. [1934 Ed.] Title 45, §§ 51-59), for injuries sustained by this petitioner in or near the City of

Nashville, Tennessee, on the 15th day of February, 1939 (R. 2-5), by reason of an alleged violation by respondent of the provisions of the Federal Safety Appliance Act (U. S. C. [1934 Ed.], Title 45, §§ 1-16), relating to hand brakes. Summons was duly issued and served upon the respondent (R. 6).

Thereafter, on September 9, 1940, the respondent filed in said City Court of East St. Louis, Illinois, its amended answer (R. 6-15) by way of denial of various of the allegations of the complaint, coupled with a plea of release.

Thereafter, on September 23, 1940, petitioner duly filed in said City Court of East St. Louis, Illinois, his reply to said answer (R. 16-20).

Thereafter, on October 14, 15, and 16, 1940, the case was duly tried to a jury in the said City Court of East St. Louis, Illinois (R. 25-26), resulting in a verdict in favor of this petitioner, as plaintiff, and against respondent, as defendant, in the sum of $20,000.00 (R. 21, 26), but thereafter, on September 18, 1941, this verdict was set aside and a new trial granted (R. 21-22).

Thereafter, on March 16, 1942, the Supreme Court of Illinois decided the cases of *Werner* v. *Illinois Central Railroad Co.*, 379 Ill. 559, 42 N. E. 2d 82, and *Mitchell* v. *Louisville & N. R. Co.*, 379 Ill. 522, 42 N. E. 2d 86, ruling, in substance and effect, that each of the various City Courts in Illinois was without jurisdiction to hear and determine the subject matter of any action involving a cause of action which arose outside the territorial limits of the City in which the particular City Court was located. Accordingly, this petitioner thereafter filed in the City Court of East St. Louis, Illinois, a motion for a change of venue in this action to the Circuit Court of St. Clair County, Illinois, under the provisions of Chapter 146, § 36, Illinois Revised Statutes 1941, because the action had been com-

menced in the wrong court—that is, in a court which, under the decisions in *Werner* v. *Illinois Central Railroad Co.*, *supra*, and *Mitchell* v. *Louisville & N. R. Co.*, *supra*, was without jurisdiction to hear and determine the subject matter of petitioner's action, because the cause of action had arisen outside the territorial limits of East St. Louis, Illinois (R. 23-24). Petitioner's motion for a change of venue was, on July 17, 1942, sustained by the said City Court of East St. Louis, Illinois, and the venue of said action was duly ordered changed to the Circuit Court of St. Clair County, Illinois (R. 28-29). On August 10, 1942, the pleadings, papers, documents and exhibits, and a duly certified transcript of all the orders, in said cause in the said City Court of East St. Louis, Illinois, were duly filed in the said Circuit Court of St. Clair County, Illinois, on change of venue (R. 1, 29).

Thereafter, on August 15, 1942, the respondent (defendant) filed in the Circuit Court of St. Clair County, Illinois, its motion to dismiss petitioner's (plaintiff's) cause (R. 29-32). That motion to dismiss was based, substantially, upon the grounds that because the said City Court of East St. Louis, Illinois, was without jurisdiction to hear and determine the subject matter (merits) of plaintiff's action, (a) all orders entered, and all proceedings had, in said City Court of East St. Louis, Illinois, including the order changing the venue in said action to the said Circuit Court of St. Clair County, were null, void and of no effect, (b) if the statute under which the change of venue was granted (Chapter 146, § 36, Illinois Revised Statutes 1941) authorizes a City Court to change the venue of an action, of which it is without jurisdiction to hear and determine the merits, to a court properly having jurisdiction to hear and determine the action, then such statute is contrary to Section 1, Article VI of the Constitution of Illinois, and is null and void, and (c) such statute, if it authorizes a

change of venue under such circumstances, is in conflict with Section 6 of the Federal Employers' Liability Act (U. S. C. [1934 Ed.] Title 45, §56), and is null and void.

This motion of respondent (defendant), to dismiss, was by the said Circuit Court of St. Clair County, Illinois, sustained on November 27, 1942, and judgment of dismissal was then entered accordingly (R. 32). From that order and judgment, petitioner (plaintiff) duly appealed to the Supreme Court of the State of Illinois (R. 33-34), where the judgment of the Circuit Court of St. Clair County, Illinois, was, on September 24, 1943, affirmed (R. 36-39).

This petitioner, in due time, filed in the said Supreme Court of Illinois his petition for a rehearing (R. 40-50), which was entertained, but on the 12th day of November, 1943, the said Supreme Court of Illinois denied said petition for a rehearing (R. 51). The said Supreme Court of Illinois having denied petitioner's petition for rehearing on said date, the judgment of said Court thereupon became final.

Opinions of the Courts Below.

There was no opinion of the trial court in the case here sought to be reviewed.

The opinion of the Supreme Court of the State of Illinois appears at pages 36-38, inclusive, of the printed transcript of the record herewith filed. It is reported as *Belcher* v. *Louisville & Nashville R. Co.*, 384 Ill. 281, 51 N. E. 2d 282, and is founded in its entirety upon a parallel case decided on the same day and reported as *Herb* v. *Pitcairn, et al.*, 384 Ill. 237, 51 N. E. 2d 277.

Jurisdiction of this Court.

1.

Jurisdiction of this Court is based upon the Judicial Code, Section 237, as amended by the Act of February 13,

1925, 43 Stat. 937, U. S. Code, Title 28, Section 344, paragraph (b) permitting petitions for certiorari to be prayed for and issued to the highest courts of the various states where a title, right, privilege or immunity is specially set up or claimed under a statute of the United States.

The action here sought to be reviewed, having been based upon the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, 35 Stat. 65, as amended by Act of Apr. 5, 1910, c. 143, 36 Stat. 291; U. S. C. [1934 Ed.] Title 45, §§ 51-59), and the Federal Safety Appliance Act (Act of Mar. 2, 1893, c. 196, 29 Stat. 531, as amended by Act of Mar. 2, 1903, c. 976, 32 Stat. 943 and Act of Apr. 14, 1910, c. 160, 36 Stat. 298; U. S. C. [1934 Ed.] Title 45, §§ 1-16), the jurisdiction of this Court attaches because the Supreme Court of Illinois, in affirming the judgment of the trial court, has decided a Federal question of substance in a way probably not in accord with the applicable and controlling principles and decisions of this Court. Some authorities sustaining the jurisdiction are:

Seaboard Air Line R. Co. v. *Horton*, 233 U. S. 492, 34 S. Ct. 635, 58 L. Ed. 1062;

Minneapolis, St. P. & S. S. M. R. Co. v. *Gomon*, 269 U. S. 406, 46 S. Ct. 129, 70 L. Ed. 335;

Gulf M. & N. R. Co. v. *Wells*, 275 U. S. 455, 48 S. Ct. 151, 72 L. Ed. 370;

Atlantic Coast Line R. Co. v. *Davis*, 279 U. S. 34, 49 S. Ct. 210, 73 L. Ed. 601.

2.

The Supreme Court of Illinois is the highest court of that State.

The original date of the judgment of the Supreme Court of Illinois here sought to be reviewed is September 24, 1943.

Petitioner's motion for a rehearing was filed October 19, 1943, within the time provided by the rules of the Supreme Court of Illinois, and said petition for rehearing was denied November 12, 1943.

Questions Presented.

Only one basic question is raised in this Court on this record, viz: Whether an action under the Federal Employers' Liability Act, instituted within two years from the day the cause of action accrued, in a State court which was without jurisdiction to hear and determine the merits of the action but which had a limited jurisdiction to change the venue of such action to a court having complete jurisdiction thereof, the venue of which action was changed to such latter court more than two years after the cause of action accrued, is "commenced within two years from the day the cause of action accrued" as required by Section 6 of the Federal Employers' Liability Act (Act of Apr. 22, 1908, c. 149, § 6, 35 Stat. 66, as amended by Act of Apr. 5, 1910, c. 143, § 1, 36 Stat. 291; U. S. C. [1934 Ed.] Title 45, § 56).

Subsidiary to this main question, there is the question of whether Section 6 of the Federal Employers' Liability Act requires suits brought under that Act in State courts to be commenced in a State court which has full and complete jurisdiction over the action.

Summary of Reasons for Allowance of Writ.

I.

In this case the Supreme Court of Illinois has decided a Federal question of substance, not heretofore determined by this Court upon a like statement of facts, in a way probably not in accord with the applicable and controlling principles and decisions of this Court.

The question is one of a general nature, involving the rights and affecting the interest of an extensive class of employees of interstate carriers by railroad, and involving the rights and liabilities of such carriers.

II.

The Supreme Court of Illinois has erroneously ruled that

(a) Recovery under the Federal Employers' Liability Act is conditioned not only upon commencing an action within two years from the date of the injury, but also upon commencing such action within such time in a court having jurisdiction to hear and determine the same—that is, that it is not enough for the action to be commenced in a court having a limited jurisdiction over the action, but it must be commenced in a court having full and complete jurisdiction.

(b) Where an action under the Federal Employers' Liability Act is instituted, within two years from the day the cause of action accrued, in a State court which was without jurisdiction to hear and determine the merits of the action but which had a limited jurisdiction to change the venue of such action to a court having complete jurisdiction thereover, the action is not "commenced within two years from the day the cause of action accrued" as required by Section 6 of the Federal Employers' Liability Act, if the change of venue to the latter court takes place more than two years after the day the cause of action accrued.

III.

The opinions and decisions of this Court, as well as those of other Federal courts hold that

(a) The Federal Employers' Liability Act is a remedial act which should be construed liberally so as to prevent the mischief and advance the remedy.

(b) The State courts, where their jurisdiction is appropriate, have concurrent jurisdiction with the Federal courts over actions under the Federal Employers' Liability Act.

(c) Where an action under the Federal Employers' Liability Act is brought in a State court, that court not only can, but must, exercise such jurisdiction as it may have over the action.

(d) An action or suit is commenced when a party puts in motion, under his claim, the instruments or process of a court of justice.

It follows that, under the controlling decisions of this Court, where (as here) an action under the Federal Employers' Liability Act is instituted, within two years from the day the cause of action accrued, in a State court which is without jurisdiction to hear and determine the merits of the action but which has a limited jurisdiction to change the venue of such action to a court having complete jurisdiction thereof, the action is "commenced within two years from the day the cause of action accrued" as required by Section 6 of the Federal Employers' Liability Act, notwithstanding that the change of venue to the latter court actually took place more than two years after the cause of action accrued.

Prayer.

For the purpose of correcting the errors complained of, and to the end that the rights of the petitioner may be determined in accordance with the Federal law, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the Supreme Court of the State of Illinois, commanding it to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and proceedings of the said Supreme Court of Illinois in the within de-

scribed cause of Benjamin F. Belcher, plaintiff-appellant, vs. Louisville & Nashville Railroad Company, a corporation, defendant-appellee, No. 27,276, to the end that the judgment of said Supreme Court of Illinois in said cause may be reviewed by this Court, as provided by law, and that your petitioner may have such other relief as to this Court may seem appropriate, and that the judgment of said Supreme Court of Illinois may be reversed by this Honorable Court.

BENJAMIN F. BELCHER,
Petitioner.

By ROBERTS P. ELAM,
Counsel for Petitioner.

MARK D. EAGLETON and
JOSEPH B. MCGLYNN,
Of Counsel.

SUPPORTING BRIEF.

This case is a parallel case to that of *Victor J. Herb, Petitioner*, v. *Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers for Wabash Railway Company, a corporation, Respondents*, No. 681, October Term, 1943, in this Court, in which a petition for writ of certiorari this day has been filed seeking a review of the decision of the Supreme Court of Illinois in *Herb* v. *Pitcairn, et al.*, 384 Ill. 237, 51 N. E. 2d 277, which was the foundation for the decision of the Supreme Court of Illinois in, and was decided by that court on the same day as, the case at bar.

The two cases involve parallel sets of facts and identical questions of law, so that it is needless to here reiterate what has been said in the supporting brief annexed to the petition for writ of certiorari in the *Herb* v. *Pitcairn* case. In support of the petition for writ of certiorari in the case at bar, we most respectfully refer the Court to the supporting brief in the *Herb* v. *Pitcairn* case.

Respectfully submitted,

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Counsel for Petitioner.

MARK D. EAGLETON and
JOSEPH B. MCGLYNN,
Of Counsel.